

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

DAVID LEE HARBIN

PETITIONER

V.

NO. 4:16-CV-80-DMB-JMV

**ATTORNEY GENERAL OF THE
STATE OF MISSISSIPPI, MR. JIM HOOD**

RESPONDENT

**ORDER TRANSFERRING CASE TO
FIFTH CIRCUIT COURT OF APPEALS**

This case is before the Court, *sua sponte*, for consideration of its transfer. David Lee Harbin has submitted a petition for a writ of habeas corpus under 28 U.S.C. § 2254. Harbin was convicted of possession of a firearm by a convicted felon on August 21, 2000. Harbin has filed at least one other unsuccessful § 2254 motion concerning the same conviction which he now seeks to challenge. *See Harbin v. Epps*, No. 4:14-CV-144 (N.D. Miss. Oct. 15, 2014); *Harbin v. Epps*, No. 4:03-CV-428 (N.D. Miss. July 19, 2004).

The Antiterrorism and Effective Death Penalty Act requires that before a second or successive petition is filed in the district court, “the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A). Harbin has not obtained such an order. Rather than dismissing the petition on this basis, the Fifth Circuit permits district courts to transfer the petition for consideration pursuant to 28 U.S.C. § 2244(a) & (b)(3)(C). *In re Epps*, 127 F.3d 364, 365 (5th Cir. 1997). Therefore, in the interest of justice and judicial economy, it is **ORDERED**:

1. This petition will be transferred to the Fifth Circuit Court of Appeals for Harbin to seek leave to file this successive § 2254 petition;

2. The Clerk of Court is directed to transfer this petition and the entire record to the Fifth Circuit Court of Appeals in accordance with 28 U.S.C. § 2244(a) & (b)(3)(C), and *In re Epps*, 127 F.3d at 365; and

3. This case is **CLOSED**.

SO ORDERED, this 17th day of May, 2016.

/s/ Debra M. Brown
UNITED STATES DISTRICT JUDGE